

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR: 7391

DATE COMPLAINT FILED: May 15, 2018

DATE OF NOTIFICATION: May 31, 2018

LAST RESPONSE RECEIVED: July 16, 2018

DATE ACTIVATED: September 18, 2018

SOL: January 4, 2023

ELECTION CYCLE: 2018

COMPLAINANT:

Foundation for Accountability and Civic Trust

RESPONDENTS:

Jason Crow for Congress and Kristen Bear in her
official capacity as treasurer

Jason Crow

Democratic Congressional Campaign Committee
and Daniel Sena in his official capacity as
treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30104(f)

52 U.S.C. § 30116(a)

52 U.S.C. § 30116(f)

11 C.F.R. § 106.4

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that the Democratic Congressional Campaign Committee (“DCCC”), Jason Crow, and Jason Crow for Congress and Kristen Bear in her official capacity as treasurer (“Crow Committee”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by making and receiving excessive in-kind contributions in the form of polling information, mailing lists, and other resources.¹ The Complaint also alleges that neither the DCCC nor the Crow Committee reported these alleged in-kind contributions.

¹ Compl. at 1 (May 23, 2018).

As discussed below, the available information indicates that the DCCC and the Crow Committee jointly purchased polling services and split the costs in accordance with Commission regulations on allocating polling expenses. Further, it appears that the DCCC did not provide the Crow Committee with any mailing list or other assistance that would constitute in-kind contributions. Accordingly, we recommend that the Commission find no reason to believe that the DCCC, the Crow Committee, and Jason Crow violated 52 U.S.C. § 30116(a) and (f) by making and accepting excessive contributions. Additionally, we recommend that the Commission find no reason to believe that the DCCC and the Crow Committee violated 52 U.S.C. § 30104(b)(4) by failing to report disbursements associated with the polling services.

II. FACTS

The Crow Committee is the principal campaign committee for Jason Crow, a 2018 candidate for Colorado's 6th Congressional District.² Citing news reports, the Complaint alleges that the DCCC sought to support Crow as its preferred candidate for the 2018 Democratic primary election, and it made unreported, excessive in-kind contributions to the Crow Committee in the form of polling data and email lists.³

The Respondents deny that the DCCC provided Crow or the Crow Committee with any mailing lists, including email lists, or other resources.⁴ The Response states that both the Crow Committee and the DCCC obtained the same polling research from the same polling consultant,

² Crow Committee Statement of Organization (Apr. 11, 2017). Crow won the 2018 General Election.

³ The primary support for the allegations is an article published by the *Intercept*, which quotes one of Crow's primary opponents as saying, "... [the DCCC] made polling data available to Crow that they did not make available to me. They made other resources available to Crow that they did not make available to me, such as mailing lists for fundraising purposes." Compl. Attach. A at 11. The Complaint also alleges that the DCCC urged Crow's primary opponents to withdraw, but does not argue that this constituted an in-kind contribution. Compl. at 2.

⁴ Resp. at 2 (July 16, 2018).

1 Global Strategy Group ("GSG").⁵ The Response states that, pursuant to the Commission's
2 regulation on the allocation of polling expenditures at section 106.4(e)(2), the committees evenly
3 split the cost of the polling and both committees properly reported the corresponding
4 expenditures.⁶

5 Although the Response does not indicate the amount that respondents paid for the
6 polling, Commission disclosure reports show that the DCCC and the Crow Committee each
7 made a series of disbursements totaling \$41,023.29 to Global Strategy Group, LLC for polling
8 services during the first half of 2018.⁷ The Crow Committee's reports describe the payments as
9 being for "Polling Services" and the DNC reports describe the payments as being for "Generic
10 Cmte. Polling."⁸ Neither the Complaint nor the Response contain any specific information about
11 the substance of the polls themselves.

12 III. LEGAL ANALYSIS

13 A. There is No Reason to Believe that the DCCC Made Excessive In-Kind 14 Contributions to Crow or the Crow Committee

15 The Act permits national political party committees to contribute up to \$5,000 per
16 election to a candidate's authorized campaign committee.⁹ The Act and Commission regulations

⁵ *Id.* at 1.

⁶ *Id.*

⁷ See Crow Committee 2018 April Quarterly Report at 415, 416 (disclosing a \$17,023.29 payment to GSG on Jan. 4, 2018, and a \$24,000 payment to GSG on Feb. 28, 2018; DCCC 2018 February Monthly Report at 4,020 (disclosing a \$2,523.29 payment to GSG on Jan. 25, 2018); DCCC 2018 March Monthly Report at 9,254 (disclosing a \$24,000 payment to GSG on Feb. 8, 2018); DCCC 2018 June Monthly Report at 23,324 (disclosing a \$14,500 payment to GSG on May 9, 2018).

⁸ *Id.*

⁹ 52 U.S.C. § 30116(a)(2)(A). National party committees can also make party coordinated expenditures in connection with the general election campaign of candidates for Federal office which do not count against the \$5,000 limit. 52 U.S.C. § 30116(d). The 2018 party coordinated expenditure limit for House candidates in states with more than one congressional seat is \$49,700. 83 Fed. Reg. 6022 (Feb. 12, 2018). These polling services, however, appear to have been purchased before Crow won the Democratic primary on June 26, 2018.

1 define "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything
2 of value made by any person for the purpose of influencing any election for Federal office."¹⁰
3 "Anything of value" includes all in-kind contributions, defined as the provision of any goods or
4 services without charge or at a charge that is less than the usual and normal charge for such
5 goods or services.¹¹ Commission regulations identify both mailing lists and polling results as
6 things of value.¹² Therefore, the purchase of opinion poll results by an unauthorized political
7 committee and the subsequent acceptance of such results (absent payment) by the candidate or
8 candidate's authorized committee is an in-kind contributions from the unauthorized committee to
9 the candidate or the authorized committee.¹³ The value of such a contribution is determined
10 using one of the allocation formulas outlined in 11 C.F.R. § 106.4(e).¹⁴ One such method
11 includes dividing the overall cost of the poll equally among candidates or political committees
12 receiving the results.¹⁵

¹⁰ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (defining "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section.").

¹¹ 11 C.F.R. § 100.52(d)(1).

¹² *See* 11 C.F.R. § 100.52(d)(1) (specifically enumerating mailing lists as a thing of value); *id.* § 106.4 (stating that receipt by a political committee of polling results paid for by another committee constitutes an in-kind contribution).

¹³ 11 C.F.R. § 106.4(b); Advisory Op. 1998-18 (Washington State Democratic Committee) at 3 ("AO 1998-18").

¹⁴ 11 C.F.R. § 106.4(e)(2).

¹⁵ *Id.*; *see also* Advisory Op. 2007-24 (Burkee/Walz) (concluding that no in-kind contribution results when two committees jointly purchase goods or services for the benefit of both committees and the vendor bills each committee separately for their share as determined using the appropriate allocation formula for the particular goods and services). Other acceptable allocation methods include (a) using the cost allocation formula provided by the polling firm; (b) allocation based on the proportion of question results each committee receives; and (c) any other method which "reasonably reflects the benefit derived." 11 C.F.R. § 106.4(e)(1), (3), (4).

1 Respondents state that both the DCCC and the Crow Committee requested the polling
2 data and divided the costs equally. Each committee reported payments of \$41,023.28 to the
3 same polling vendor, which appears to corroborate Respondents' statement, and is consistent
4 with section 106.4(e)(2). Thus, it does not appear that the DCCC made an excessive, in-kind
5 contribution in the form of polling services.

6 With respect to the allegations that the DCCC provided the Crow Committee with
7 mailing lists and other support, the Complaint's sole support for the allegation is a press report
8 quoting one of Crow's primary opponents as saying "[the DCCC] made other resources available
9 to Crow that they did not make available to me, such as email lists for fundraising."¹⁶
10 Respondents deny that the DCCC provided Crow with mailing lists or any other goods or
11 services, and we have found no information indicating otherwise.

12 Accordingly, we recommend that the Commission find no reason to believe that the
13 Democratic Congressional Campaign Committee and Daniel Sena in his official capacity as
14 treasurer made, and Jason Crow and Jason Crow for Congress and Kristen Bear in her official
15 capacity as treasurer accepted, excessive in-kind contributions in violation of 52 U.S.C.
16 § 30116(a) and (f).

17 **B. Respondents Properly Reported Disbursements for the Polling Expenses**

18 Political Committees must report disbursements for operating expenses in accordance
19 with 52 U.S.C. § 30104(b)(4). Here, the DCCC's purchase of the polling, for its own use, is
20 considered an operating expense,¹⁷ which the DCCC reported as disbursements to Global

¹⁶ Compl., Attach. A at 11.

¹⁷ See AO 1998-18 at 3 (stating that the purchase of polling and poll results by an unauthorized political committee for its own use, in whole or in part, is an overhead expenditure by the political committee under 11 C.F.R. § 106.1(c)(1) to the extent of the benefit derived by the committee).

1 Strategy Group on Schedule B of the committee's disclosure reports for the relevant periods.¹⁸
2 Similarly, the Crow Committee's purchase of the polling is an expenditure, which the committee
3 properly reported on Schedule B of its relevant reports.¹⁹

4 Accordingly, we recommend that the Commission find no reason to believe that the
5 Democratic Congressional Campaign Committee and Daniel Sena in his official capacity as
6 treasurer and Jason Crow for Congress and Kristen Bear in her official capacity as treasurer
7 violated 52 U.S.C. § 30104(b)(4) by failing to report disbursements associated with the polling
8 services.

9 **IV. RECOMMENDATIONS**

- 10 1. Find no reason to believe that the Democratic Congressional Campaign
11 Committee and Daniel Sena in his official capacity as treasurer violated 52 U.S.C.
12 § 30116(a);
- 13 2. Find no reason to believe that Jason Crow for Congress and Kristen Bear in her
14 official capacity as treasurer and Jason Crow violated 52 U.S.C. § 30116(f);
- 15 3. Find no reason to believe that the Democratic Congressional Campaign
16 Committee and Daniel Sena in his official capacity as treasurer and Jason Crow
17 for Congress and Kristen Bear in her official capacity as treasurer violated
18 52 U.S.C. § 30104(b)(4) by failing to report disbursements;
- 19 4. Approve the attached Factual and Legal Analysis;
- 20 5. Approve the appropriate letters; and
- 21 6. Close the file.


¹⁸ See *supra* note 7.


¹⁹ See *id.*

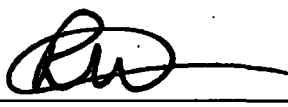
Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement

12.11.18
Date


Stephen Gura
Deputy Associate General Counsel


Jin Lee
Acting Assistant General Counsel


Ray L. Wolcott
Attorney

Attachment:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jason Crow for Congress and Kristen Bear MUR 7391
in her official capacity as treasurer
Jason Crow
Democratic Congressional Campaign
Committee and Daniel Sena in his
official capacity as treasurer

I. INTRODUCTION

The Complaint alleges that the Democratic Congressional Campaign Committee (“DCCC”), Jason Crow, and Jason Crow for Congress and Kristen Bear in her official capacity as treasurer (“Crow Committee”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by making and receiving excessive in-kind contributions in the form of polling information, mailing lists, and other resources.¹ The Complaint also alleges that neither the DCCC nor the Crow Committee reported these alleged in-kind contributions.

As discussed below, the available information indicates that the DCCC and the Crow Committee jointly purchased polling services and split the costs in accordance with Commission regulations on allocating polling expenses. Further, it appears that the DCCC did not provide the Crow Committee with any mailing list or other assistance that would constitute in-kind contributions. Accordingly, the Commission finds no reason to believe that the DCCC, the Crow Committee, and Jason Crow violated 52 U.S.C. § 30116(a) and (f) by making and accepting excessive contributions. Additionally, the Commission finds no reason to believe that the DCCC and the Crow Committee violated 52 U.S.C. § 30104(b)(4) by failing to report disbursements associated with the polling services.

¹ Compl. at 1 (May 23, 2018).

1. **II. FACTS**

2 The Crow Committee is the principal campaign committee for Jason Crow, a 2018
3 candidate for Colorado's 6th Congressional District.² Citing news reports, the Complaint alleges
4 that the DCCC sought to support Crow as its preferred candidate for the 2018 Democratic
5 primary election, and it made unreported, excessive in-kind contributions to the Crow Committee
6 in the form of polling data and email lists.³

7 The Respondents deny that the DCCC provided Crow or the Crow Committee with any
8 mailing lists, including email lists, or other resources.⁴ The Response states that both the Crow
9 Committee and the DCCC obtained the same polling research from the same polling consultant,
10 Global Strategy Group ("GSG").⁵ The Response states that, pursuant to the Commission's
11 regulation on the allocation of polling expenditures at section 106.4(e)(2), the committees evenly
12 split the cost of the polling and both committees properly reported the corresponding
13 expenditures.⁶

14 Although the Response does not indicate the amount that respondents paid for the
15 polling, Commission disclosure reports show that the DCCC and the Crow Committee each
16 made a series of disbursements totaling \$41,023.29 to Global Strategy Group, LLC for polling

² Crow Committee Statement of Organization (Apr. 11, 2017). Crow won the 2018 General Election.

³ The primary support for the allegations is an article published by the *Intercept*, which quotes one of Crow's primary opponents as saying, "... [the DCCC] made polling data available to Crow that they did not make available to me. They made other resources available to Crow that they did not make available to me, such as mailing lists for fundraising purposes." Compl. Attach. A at 11. The Complaint also alleges that the DCCC urged Crow's primary opponents to withdraw, but does not argue that this constituted an in-kind contribution. Compl. at 2.

⁴ Resp. at 2 (July 16, 2018).

⁵ *Id.* at 1.

⁶ *Id.*

1 services during the first half of 2018.⁷ The Crow Committee's reports describe the payments as
2 being for "Polling Services" and the DNC reports describe the payments as being for "Generic
3 Cmte. Polling."⁸ Neither the Complaint nor the Response contain any specific information about
4 the substance of the polls themselves.

5 **III. LEGAL ANALYSIS**

6 **A. There is No Reason to Believe that the DCCC Made Excessive In-Kind** 7 **Contributions to Crow or the Crow Committee**

8 The Act permits national political party committees to contribute up to \$5,000 per
9 election to a candidate's authorized campaign committee.⁹ The Act and Commission regulations
10 define "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything
11 of value made by any person for the purpose of influencing any election for Federal office."¹⁰
12 "Anything of value" includes all in-kind contributions, defined as the provision of any goods or
13 services without charge or at a charge that is less than the usual and normal charge for such
14 goods or services.¹¹ Commission regulations identify both mailing lists and polling results as

⁷ See Crow Committee 2018 April Quarterly Report at 415, 416 (disclosing a \$17,023.29 payment to GSG on Jan. 4, 2018, and a \$24,000 payment to GSG on Feb. 28, 2018; DCCC 2018 February Monthly Report at 4,020 (disclosing a \$2,523.29 payment to GSG on Jan. 25, 2018); DCCC 2018 March Monthly Report at 9,254 (disclosing a \$24,000 payment to GSG on Feb. 8, 2018); DCCC 2018 June Monthly Report at 23,324 (disclosing a \$14,500 payment to GSG on May 9, 2018).

⁸ *Id.*

⁹ 52 U.S.C. § 30116(a)(2)(A). National party committees can also make party coordinated expenditures in connection with the general election campaign of candidates for Federal office which do not count against the \$5,000 limit. 52 U.S.C. § 30116(d). The 2018 party coordinated expenditure limit for House candidates in states with more than one congressional seat is \$49,700. 83 Fed. Reg. 6022 (Feb. 12, 2018). These polling services, however, appear to have been purchased before Crow won the Democratic primary on June 26, 2018.

¹⁰ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a); *see also* 52 U.S.C. § 30118(b)(2) (defining "contribution" to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section.").

¹¹ 11 C.F.R. § 100.52(d)(1).

1 things of value.¹² Therefore, the purchase of opinion poll results by an unauthorized political
2 committee and the subsequent acceptance of such results (absent payment) by the candidate or
3 candidate's authorized committee is an in-kind contributions from the unauthorized committee to
4 the candidate or the authorized committee.¹³ The value of such a contribution is determined
5 using one of the allocation formulas outlined in 11 C.F.R. § 106.4(e).¹⁴ One such method
6 includes dividing the overall cost of the poll equally among candidates or political committees
7 receiving the results.¹⁵

8 Respondents state that both the DCCC and the Crow Committee requested the polling
9 data and divided the costs equally. Each committee reported payments of \$41,023.28 to the
10 same polling vendor, which appears to corroborate Respondents' statement, and is consistent
11 with section 106.4(e)(2). Thus, it does not appear that the DCCC made an excessive, in-kind
12 contribution in the form of polling services.

13 With respect to the allegations that the DCCC provided the Crow Committee with
14 mailing lists and other support, the Complaint's sole support for the allegation is a press report
15 quoting one of Crow's primary opponents as saying "[the DCCC] made other resources available

¹² See 11 C.F.R. § 100.52(d)(1) (specifically enumerating mailing lists as a thing of value); *id.* § 106.4 (stating that receipt by a political committee of polling results paid for by another committee constitutes an in-kind contribution).

¹³ 11 C.F.R. § 106.4(b); Advisory Op. 1998-18 (Washington State Democratic Committee) at 3 ("AO 1998-18").

¹⁴ 11 C.F.R. § 106.4(e)(2).

¹⁵ *Id.*; see also Advisory Op. 2007-24 (Burke/Walz) (concluding that no in-kind contribution results when two committees jointly purchase goods or services for the benefit of both committees and the vendor bills each committee separately for their share as determined using the appropriate allocation formula for the particular goods and services). Other acceptable allocation methods include (a) using the cost allocation formula provided by the polling firm; (b) allocation based on the proportion of question results each committee receives; and (c) any other method which "reasonably reflects the benefit derived." 11 C.F.R. § 106.4(e)(1), (3), (4).

1 to Crow that they did not make available to me, such as email lists for fundraising.”¹⁶

2 Respondents deny that the DCCC provided Crow with mailing lists or any other goods or
3 services, and we have found no information indicating otherwise.

4 Accordingly, the Commission finds no reason to believe that the Democratic
5 Congressional Campaign Committee and Daniel Sena in his official capacity as treasurer made,
6 and Jason Crow and Jason Crow for Congress and Kristen Bear in her official capacity as
7 treasurer accepted, excessive in-kind contributions in violation of 52 U.S.C. § 30116(a) and (f).

8 **B. Respondents Properly Reported Disbursements for the Polling Expenses**

9 Political Committees must report disbursements for operating expenses in accordance
10 with 52 U.S.C. § 30104(b)(4). Here, the DCCC’s purchase of the polling, for its own use, is
11 considered an operating expense,¹⁷ which the DCCC reported as disbursements to Global
12 Strategy Group on Schedule B of the committee’s disclosure reports for the relevant periods.¹⁸
13 Similarly, the Crow Committee’s purchase of the polling is an expenditure, which the committee
14 properly reported on Schedule B of its relevant reports.¹⁹

15 Accordingly, the Commission finds no reason to believe that the Democratic
16 Congressional Campaign Committee and Daniel Sena in his official capacity as treasurer and
17 Jason Crow for Congress and Kristen Bear in her official capacity as treasurer violated 52 U.S.C.
18 § 30104(b)(4) by failing to report disbursements associated with the polling services.

¹⁶ Compl., Attach. A at 11.

¹⁷ See AO 1998-18 at 3 (stating that the purchase of polling and poll results by an unauthorized political committee for its own use, in whole or in part, is an overhead expenditure by the political committee under 11 C.F.R. § 106.1(c)(1) to the extent of the benefit derived by the committee).

¹⁸ See *supra* note 7.

¹⁹ See *id.*